

1 On the other issues on your list, Ms. Mabry--
2 MR. NICKOLA: Judge, the only--only other thing
3 that--

4 THE COURT: --do you want me to address any of
5 those?

6 MS. MABRY: No. The--the only thing I'm con-
7 cerned about are witnesses at this point.

8 MR. NICKOLA: Judge, as it relates to the video,
9 I just wanted to make sure that my objection was
10 expressed--

11 THE COURT: Well, they didn't show me the--

12 MR. NICKOLA: --to the admittance of that video
13 especially--

14 THE COURT: Which video now, we are talking
15 about--

16 MR. NICKOLA: We're--we're talking about the My
17 Family video.

18 THE COURT: My Family video, all right.

19 MR. NICKOLA: Right. At the last portion of the
20 video is excerpts from the Montel William Show, I have--
21 I would object to that, I think that's prejudicial more
22 than probative. I don't know what that would be proba-
23 tive to in any part of this case.

24 THE COURT: Ms. Mabry.

25 MS. MABRY: Judge, that is what she chose to

1 send Jerry Cassaday and it will fit in with the theory
2 of our case as to what she is about. This jury is going
3 to be trying to evaluate what she is about and plus it
4 goes to Jerry Cassaday's state of mind.

5 MR. PLUMMER: Right.

6 MS. MABRY: Here is this poor woman who has had
7 her child abused and now she has had two other sets of
8 babies killed, and I definitely think that it goes to
9 her state of mind or his state of mind.

10 THE COURT: Well, I know, but it is her
11 statement--

12 MS. MABRY: It's her statement--

13 THE COURT: --that's the point. And it is her
14 transmission.

15 MS. MABRY: Right.

16 THE COURT: And so it will come in as a party
17 admission and her own act of having sent it. She chose
18 it and sent it.

19 Now, I did prepare yesterday, and it is a draft,
20 a pre-jury screening questionnaire and I know Mr. Nick-
21 ola sent someone up to pick it up. I wanna have as we
22 have done in most of our big cases in recent years in
23 circuit court have some pre-screening conducted because
24 this case is gonna take several weeks and we need to
25 have this done with these types of issues in my belief,

1 although I guess we could do it without, but we have
2 done it with some success and it has helped us in our
3 jury selection, the most recently in my court was Mr.
4 Riggs and Snyder, etc., in the murder case, but I would
5 like you both to have a look at that if you wouldn't
6 mind, please, and then I'm not wedded to it, but I just
7 wanna get the general ideas and then have a version so
8 that the jury board no later than Friday can make the
9 necessary copies for the jurors to use on the Tuesday of
10 jury selection and get them all done.

11 So I know we have to get you a copy, you got
12 yours right, Mr. Nickola?

13 MR. NICKOLA: Yes, I did, Judge.

14 Judge, just in terms of, because the cases

15 I've--

16 MS. MABRY: No, I didn't get a copy--

17 MR. NICKOLA: --I've tried with you--

18 THE COURT: I don't have a copy--

19 MR. NICKOLA: --with you before we haven't
20 utilized that. I do have--because the cases I have
21 tried in front of your court we haven't utilized that,
22 just so that I understand, it would be submitted to the
23 jury, they would fill out in advance--

24 THE COURT: The jury board will take that ques-
25 tionnaire, they would have all the jurors in the pool

1 fill it out, if people say, like I'm on vacation for the
2 week of January 3, they're out because they can't be
3 here. There is no point in even having them come up the
4 courtroom.

5 MR. NICKOLA: Right. So the Court's open that--
6 that--

7 THE COURT: That's an example--

8 MR. NICKOLA: --when we--you take--we take a
9 look at and the Court is open to our suggestions that we
10 might--

11 THE COURT: The first problem is that we wanna
12 design the questionnaire on the so-called hot issues of
13 the case--

14 MR. NICKOLA: Right--

15 THE COURT: --that might eliminate certain peo-
16 ple from even coming upstairs and get a pool that hope-
17 fully we've weeded out, people that know people, know
18 about the case, live right next door or on vacation,
19 have a hard, you know, whatever they got their surgery
20 planned for whatever, all those types of people out so
21 they don't even come up to the court.

22 MR. NICKOLA: Would--would you like to say for
23 instance like by Wednesday that if we have anything we
24 would like to add to that to get it to you?

25 THE COURT: Yes.

1 MR. NICKOLA: It's probably--

2 THE COURT: Is that all right with you, Ms.

3 Mabry?

4 MS. MABRY: That's fine.

5 THE COURT: You looked puzzled, Mr. Plummer--

6 MS. MABRY: We are gonna get a copy, okay.

7 MR. PLUMMER: I'm--I'm just listening--

8 THE COURT: He looks--

9 MR. PLUMMER: --I wasn't aware of this proce-
10 dure, and I was just trying to hear--

11 THE COURT: Never heard of it. Okay, let me try
12 to find mine. Just a moment.

13 If we have a Xerox handy then I will be able to
14 give it to you.

15 MR. PLUMMER: Your Honor, I certainly--

16 MS. MABRY: There is one--

17 MR. PLUMMER: --understand the concept the Court
18 is mentioning and I don't see anything--I don't see
19 anything--

20 THE COURT: I'm sorry, Mr. Nickola, go ahead--

21 MS. MABRY: We have to look at it.

22 MR. PLUMMER: Okay.

23 MR. NICKOLA: Just one last question I had about
24 the--the pre-screen. Would they be available to us
25 prior to bringing in the jury or is this something that

1 we will have to look at with, along with the--

2 THE COURT: No, you wouldn't get the people that
3 are screened out.

4 MR. NICKOLA: Okay.

5 THE COURT: If she gets one in there and these
6 people say, I knew Sharee Miller, I knew, I worked with
7 Bruce Miller, I, some, whatever it is, I'm a police of-
8 ficer with the Mt. Morris Township Police and investi-
9 gate, I don't know whoever the police, they're just not
10 even gonna show up--

11 MR. NICKOLA: Okay--

12 THE COURT: --upstairs.

13 MR. NICKOLA: All right. So the people who do
14 come up we're not gonna have privy to their answers?

15 THE COURT: To these. We can arrange to them
16 for you I'm sure--

17 MR. NICKOLA: Okay, okay, thank you.

18 THE COURT: Would you like to have that done
19 that way? I mean, we can design the--

20 MR. NICKOLA: Well, just--just--

21 THE COURT: --design the procedure any way you
22 want, but if you don't want them weeded them out it's
23 probably not worth doing it is the point--

24 MR. NICKOLA: Well, no, I'm not--I'm not neces-
25 sarily suggesting that, my only suggestion is is that

1 there may be some responses that--that the jurors--

2 THE COURT: Would be interesting to you.

3 MR. NICKOLA: The purposes jurors who are coming
4 in who are not weeded out may have--it may help us cut
5 the chase, in other words.

6 THE COURT: Right. I wanna cut to the chase
7 'cause that is what I can say.

8 Here is a copy that we had, I sent Mr. Nickola
9 one with his secretary or whoever it was--

10 MR. NICKOLA: Yes, I have it, Judge--

11 THE COURT: --that came up, it's three pages
12 right now. I'm not wedded to it, it's all we could
13 think up in five, not five minutes, but Ms. Ferris has
14 some she always uses and Mr. Riggs and Mr. Synder have
15 done a number of these bigger cases, I took some of
16 their questions, some specific for this case, that looks
17 like the last version that we came up with. We will
18 copy it, let you have it, please look at it. Let's try
19 to agree maybe as soon as Wednesday, please. They need
20 to run a lot of them obviously to have them available
21 for Tuesday.

22 MR. PLUMMER: Thank you, your Honor.

23 THE COURT: Anything else now?

24 MS. MABRY: Just the witness--witnesses, Judge.

25 THE COURT: Yes.

1 MS. MABRY: Because of the flight arrangements
2 and whatnot.

3 Specifically, Christina Hurd is in Texas and
4 Cliff Blanchard is in Texas--

5 THE COURT: And she is what, injured.

6 MR. PLUMMER: In Texas--

7 MR. NICKOLA: No, Judge, I--I have a list from--
8 from Ms. Mabry, she gave me a list of about six or seven
9 names. I'm gonna meet with my client and discuss that
10 and I'm hoping that I can give answers, pretty confident
11 there is going to be waivers on many of those people
12 Monday morning, and I have to be down here Monday morn-
13 ing on a pre-trial and I'll make it a point to stop by
14 her office and let her know if there is--if that is
15 resolved.

16 MS. MABRY: I would appreciate that 'cause Lori
17 Riggs, our office manager, is holding off on any travel
18 arrangements, so that's fine.

19 THE COURT: The more, I found the more we cover
20 on these cases the better it goes, so we certainly met
21 on Richmond's last case probably twice a week for about
22 three weeks ahead of time to iron out as many things as
23 we could iron out. So if you wanna meet, but let's at
24 least look at the questionnaire, get that resolved and
25 then try to get me a final witness list from both sides.

1 See that is attached so that the people in the jury pool
2 can look at the list of witnesses and if it turns out
3 their best friend or next door neighbor is on there,
4 that may be a reason we don't want them upstairs.

5 MS. MABRY: Do you want to meet on Wednesday
6 briefly?

7 MR. PLUMMER: Your Honor--

8 THE COURT: Yes--

9 MR. PLUMMER: --I apologize, but I'll be--

10 THE COURT: I don't expect--she--I don't know
11 who is suppose to be handling this case, if she is then
12 don't worry about you.

13 MR. PLUMMER: Yeah, I just want to let the Court
14 know I will be in Sacramento from December 4th to Decem-
15 ber 9th.

16 THE COURT: Okay.

17 MR. PLUMMER: Thank you.

18 THE COURT: I'm not worried about you if she is
19 handling it, so.

20 Well, get the questionnaire copied and we will
21 be in recess and if you wanna meet, agree on a time, and
22 call Diane or Major, thank you.

23 MR. NICKOLA: Thank you, Judge.

24 MR. PLUMMER: Thank you, your Honor.

25 THE COURT: All right, thanks everybody.

1 (At 1:45 p.m. court off record)

2 (At 1:45 p.m. court reconvened)

3 MS. MABRY: I was going to go through, weed out,
4 some of those ones that you have admitted possibly and
5 then put them in chronological order and then number
6 them and then try to have them printed into color and
7 given to everyone and then make enough copies for the
8 jury, but--but rearrangement in chronological order--

9 THE COURT: Okay. You don't--

10 MS. MABRY: --maybe take some of them out.

11 THE COURT: The only thing that I could think of
12 we didn't talk about, there was one photo I never saw
13 that was laying on that table awhile ago of her without
14 much on and some bruises, and I--that has never been be-
15 fore me. So I don't know anything about it--

16 MS. MABRY: That--that was--I can tell you what
17 our contention is on that but . . .

18 (Counsel conferring with Mr. Nickola)

19 THE COURT: We will bring her back right now, if
20 there is something to discuss.

21 MS. MABRY: We will just do it later at trial?

22 MR. NICKOLA: Yeah.

23 MS. MABRY: Okay.

24 (At 1:47 p.m. proceeding concluded)

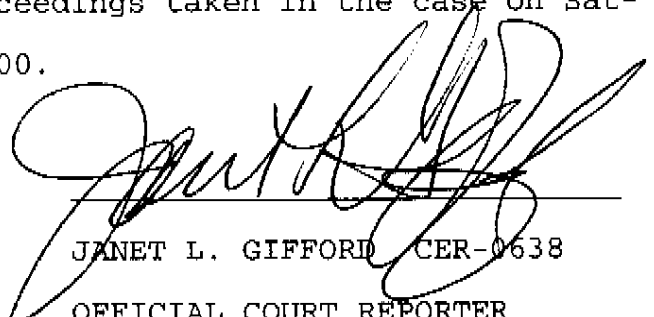
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1 STATE OF MICHIGAN)

2) SS

3 COUNTY OF GENESEE)
4
5

6 I certify that this transcript, consisting of
7 the foregoing pages is a complete, true and correct
8 transcript of the proceedings taken in the case on Sat-
9 urday, December 2, 2000.

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11
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18 April 23, 2001
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